



U.S. Department of Labor Wage and Hour Division

GA Fruit and Vegetable Association
Labor Forum

November 9, 2021



Mike Rios
Regional Enforcement Coordinator



COVID-19 (again)



- WHD will continue to conduct onsite investigations
- All investigators have been trained on proper use of Personal Protective Equipment (PPE)
- Social distancing guidelines will be followed at all times during investigations
- Some portions of investigations may be conducted virtually
 - For example, WHD may request that payroll records and other pertinent documents be sent electronically for inspection offsite
 - Investigators may request photos of housing, transportation, or field sanitation facilities to establish compliance

Employer Documentation Gateway (External User Portal)



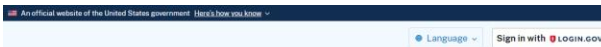
FAQ

- What happens when I...
- How do I...
- How many times...
- Can I...

How to Upload Documents

- Step 1: Verify your information
- How to Upload Documents

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FYTD 2021 Findings – Georgia



- Number of cases: 30
- Compliance rate: 33%
- Civil Money Penalties: \$325,927
- Back Wages ATP: \$195,503
- Number of workers affected: 457

CY 2021 Surety Bond Liquidations SE Region



- | | |
|-----------------------------|----------|
| • Las Gemelas (Amparo Mata) | \$25,977 |
| • Manuel Sanchez | \$10,000 |

TOTAL - \$35,977

FY 2021 H-2A Debarments SE Region



- Flo-Ag *and* Jose Flores *and* Juan Flores
 - September 2020 to October 2022
- 701 Harvesting (actually Martin Vasquez, using Susana Ocegüera-Reyes as “FLC”)
 - July 2021 to July 2024
- David & Theresa Hunt (Hunt Farms)
 - April 2021 to December 2023
- Eufemio Avila Harvesting
 - June 2021 to June 2024
- Vision Landscape (now Andrew’s Nursery)
 - January 2021 to January 2024

Recent Press – FY 2021



NOVEMBER 20, 2020

[Mississippi Fish Farm Pays \\$30,963 in Back Wages After U.S. Department of Labor Finds H-2A Visa Program Violations](#)

SCHLATER, MS – After an investigation by the U.S. Department of Labor’s Wage and Hour Division (WHD), Tackett Fish Farms LLC – based in Schlater, Mississippi – has paid \$30,963 in back wages to 38 employees for violating the labor provisions of the Immigration and Nationality Act’s H-2A visa program.

DECEMBER 1, 2020

[U.S. Department of Labor Debars Florida H-2A Labor Contractors For Violating Guest Worker Visa Requirements](#)

LABELLE, FL – The U.S. Department of Labor’s Wage and Hour Division (WHD) has debarred Flo-Ag LLC – a farm labor contracting company based in Labelle, Florida – and its principals Jose Flores and Juan Flores from applying for certification to request temporary foreign workers under the H-2A agricultural worker visa program for two years.

Recent Press – FY 2021



JANUARY 13, 2021

[Florida Beekeeper Pays \\$10,487 in Back Wages and Penalties After U.S. Department of Labor Finds Violations of Guest Worker Visa Program](#)

NEW SMYRNA BEACH, FL – After an investigation, the U.S. Department of Labor’s Wage and Hour Division (WHD) assessed S&S Apiaries LLC – a New Smyrna, Florida-based beekeeper – a \$6,357 civil money penalty and found the employer owed \$4,130 in back wages to three employees for violating the labor provisions of the H-2A guest worker visa program.

MAY 12, 2021

[South Florida H-2A employer pays \\$21K after US Department of Labor uncovers guest worker visa program violations](#)

LEHIGH ACRES, FL – Eighty-one workers harvesting squash and zucchini at a Homestead farm discovered the contractor who hired them was not going to provide meals or kitchen facilities. Workers were forced to spend more on meals than \$12.46 per day, the amount promised by the contractor, a violation of the federal [H-2A guest worker visa program](#).

Recent Press – FY 2021



JUSTICE NEWS

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, September 22, 2021

Defendants Charged in Connection with Multi-State Racketeering Conspiracy Involving the Forced Labor of Mexican Agricultural H-2A Workers

A federal grand jury in the Middle District of Florida has returned a six-count indictment against three defendants for their alleged roles in a federal racketeering conspiracy that victimized Mexican H-2A workers who, between 2015 and 2017, had worked in the United States harvesting fruits, vegetables and other agricultural products.

The indictment alleges that from 2015 through 2017, the defendants participated in running a labor contracting company for H-2A agricultural workers called Los Villatoros Harvesting (LVH), which functioned as a criminal enterprise. LVH subjected multiple Mexican H-2A agricultural workers employed in Florida, Kentucky, Indiana, Georgia and North Carolina to forced labor. LVH also harbored H-2A workers in the United States after their visas had expired for financial gain and committed visa fraud and fraud in foreign labor contracting.

The indictment charges Bladimir Moreno, a permanent resident of the United States and citizen of Mexico who owned and managed LVH, and Christina Gamez, a citizen of the United States who worked for LVH as a bookkeeper, manager and supervisor, with conspiracy under the Racketeer Influenced and Corrupt Organizations (RICO) Act, conspiracy to commit forced labor, forced labor, and conspiracy to obstruct proceedings before departments, agencies and committees. Guadalupe Mendes Mendoza, a citizen of Mexico who worked as a manager and supervisor for LVH, was charged with conspiracy to obstruct proceedings before agencies.

The indictment alleges that the defendants charged with committing the RICO conspiracy operated LVH as a criminal scheme. They obtained hundreds of hours of physically demanding agricultural labor from the victimized H-2A workers through coercive means, such as imposing debts on workers; confiscating the workers’ passports; subjecting workers to crowded, unsanitary and degrading living conditions, as well as to yelling and verbal abuse; threatening workers with arrest, jailtime and deportation; isolating workers and limiting their ability to interact with anyone other than LVH employees; and suggesting to workers that if they failed to comply with the defendants’ demands, they or their family members could be physically harmed.

H-2A – By the numbers



FY 2019

- **257,667** – Number of H2A workers certified
- **10.8%** – Percentage increase from 2018
- **3** – Number of S.E. Region states in top 5 (Florida, Georgia, North Carolina)

FY 2020

- **275,430** – Number of H2A workers certified
- **6.5%** – Percentage increase from 2019
- **3** – Number of S.E. Region states in top 5 (Florida, Georgia, North Carolina)

H-2A – By the numbers



FY 2021

- **315,000** – Number of H2A workers certified (est.)
- **14%** – Percentage increase from 2020
- **3** – Number of S.E. Region states in top 5 (Florida, Georgia, North Carolina)

FY 2017

- **200,049** – Number of H2A workers certified
- **36%** – Percentage increase from 2017 to 2021
- **3** – Number of S.E. Region states in top 5 (Florida, Georgia, North Carolina)

Recent Enforcement Issues



- **Multiple Company Names:** Occurs when principal's company has been debarred. ETA will scrutinize and may not certify subsequent petition. WHD will pierce corporate veil and debar individual, as well.
- **Joint Employment:** Growers may jointly employ agricultural workers (MSPA or H-2A) furnished by FLCs or H2ALCs. Growers should ensure compliance.
- **U.S. workers:** Failure to contact former US workers and/or hire US workers seeking employment. Make whole relief for each US worker unlawfully rejected. Elevated civil money penalties. Debarment.
- **False Documents:** The provision of falsified documents showing proper payment of wages or reimbursement to workers. OIG referral. Debarment.
- **Meals:** Undisclosed meal deductions or full meal deductions for partial meals.
- **Actual Terms and Conditions:** Misleading number of potential work hours or weekly schedule on ETA-9142. If applicable, previous 3 years of payroll records will be reviewed.

H-2A Basics



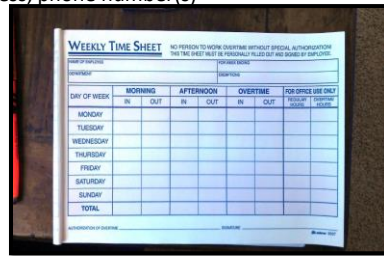
- **U.S. worker protections**
 - Must call back former US workers | Must hire able US workers seeking employment | Make whole
- **Disclosure**
 - Must provide working terms and conditions during recruitment
- **Wages**
 - Must pay highest hourly rate | Must pay prevailing piece rate | $\frac{3}{4}$ Guarantee
- **Recordkeeping**
 - Must maintain true/accurate number of hours worked/offered and/or piece-rate records
- **Housing**
 - Must be provided at no cost | Must pass safety and health inspection
- **Transportation**
 - Inbound must be reimbursed by 50% of contract dates of need | Daily must be provided at no cost
- **Legal requirements**
 - Worker's comp | Waiver of rights | Discriminate/Threaten/Retaliation
- **H-2ALCs**
 - Invalid Fixed Site Information



H-2A Investigations

BEST PRACTICES:

- Have all time and payroll records readily available/accessible
- Allow/facilitate worker interviews
- Allow/facilitate vehicle and housing safety and health inspections
- Maintain all H-2A certification documentation – 790/9142/3rd party contracts
- Maintain accurate H-2A worker information – name, address, phone, date of entry
- Provide employer valid address, email address, phone number(s)



H-2A Resources



- **Employment and Training Administration**
 - Employer Guide to Participation in the H-2A Temporary Agriculture Program:
https://www.foreignlaborcert.doleta.gov/pdf/h-2a_employer_handbook.pdf
 - H-2A Debarment list:
https://www.foreignlaborcert.doleta.gov/pdf/Debarment_List_Revisions.pdf
- **Wage and Hour Division**
 - Resources for Employers:
<https://www.dol.gov/WHD/foremployers.htm#ca>
 - H-2A: https://www.dol.gov/whd/ag/ag_h-2a.htm
 - Ineligible farm labor contractors:
https://www.dol.gov/whd/regs/statutes/mspa_debar.htm

Enforcement Data



Data on concluded cases is available:

www.enforcementdata.dol.gov

Summary data by industry is available:

www.dol.gov/agencies/whd/data

[Click here](#) to view All Acts.

[Click here](#) to view Fair Labor Standards Act Back Wages.

[Click here](#) to view Low Wage, Industries Data.

[Click here](#) to view Outreach Data.

[Click here](#) to view Child Labor Data.

[Click here](#) to view FMLA Data.

[Click here](#) for Agricultural Data (including H-2A, MSPA and OSHA).

[Click here](#) for Industries Employing High Numbers of H-2B Workers.

[Click here](#) for H-1B Data.

[Click here](#) for Government Contracts Data.

WHD Contacts



- Wage and Hour Division
 - General Toll-Free: 866-487-9243
 - Community Outreach and Resource Planning Specialists:
 - <https://www.dol.gov/whd/corpsFlyer.pdf>
 - Local Offices: <https://www.dol.gov/whd/local/>



THANK YOU